

Remarks

Claims 4 through 7 are presently pending.

A. The rejection of claims 4-6 under 35 U.S.C. 102(b) as being anticipated by Fortin (5457898) is respectfully traversed for the reasons discussed below.

In contrast to the Fortin metatarsal guard, applicant's simple structure does not require Fortin's relatively long right side slit 19 or the corresponding relatively long left side slit to facilitate flexion of the metatarsal guard 10 and to permit flexion of the foot of the wearer. Likewise, applicant's structure does not require the laterally adjacent tongues 21 of Fortin et al which spread apart from each other to follow the movement of the foot when the wearer is walking and thereby prevent the metatarsal guard 10 from impeding walking. Nor does applicant's structure require the flap 22 of Fortin to distribute the load on the different tongues 21. Applicant has found that its simple structure can avoid the use of all these elements and still meet the present industrial requirements for impact resistant safety shoes and provide flexibility to the wearer.

Claim 4, as amended, recites that the metatarsal guard comprises a convex arch portion having a section immediately rearward of the support legs, a lip, and a right and left support leg and wherein the metatarsal guard does not have any slits therein. Fortin, in contrast, has slits in the arch portion and in the right and left support leg and thus does not anticipate claim 4. In addition, Fortin is further distinguished in that each of the split edge surfaces comprise two support load bearing legs and not the single support legs recited in the claims.

With respect to claim 5, Fortin includes slits in the arch portion and is still further distinguishable from claim 5. Claim 6 includes the limitation that the right and left support legs are of less width than the convex arch portion and that too is not disclosed in the Fortin reference. Claim 7 is dependent upon claim 4 and therefore is patentable for the same reasons as claim 4. For all these reasons, it is submitted that claims 4-7 are not anticipated by Fortin.

B. In Krajcir, assuming that the front element 10 is a lip, as asserted by the Examiner, it is seen that front element 10 bears against the sole. Independent claim 4, as amended, recites that the lip does not bear against the sole. Therefore claim 4, and dependent claims 5 through 7, are not anticipated by Krajcir.

C. The rejection of claims 4-6 under 35 U.S.C. 103(a) as being unpatentable over Fortin is respectfully traversed for the reasons discussed below.

The basis of this rejection is that it would have been obvious to remove the slit from the shoe of Fortin to provide a stronger and stiffer shoe. (The reference to In re Karlson in the rejection appears to include an incorrect citation.) But, to modify Fortin in this manner would eliminate a significant function of the Fortin shoe, namely, to "facilitate flexion of the metatarsal guard and prevent [the] guard from impeding flexion of the foot of the wearer in a crouching posture" (col. 1, line 66 to col. 2, line 1). Because the proposed omission of the slit from Fortin would not permit the remaining elements to perform the same function as before, the proposed modification is not proper under 35 U.S.C. 103(a). In addition, the presence of the longitudinal slits 20 in the metatarsal guard of Fortin prevents Fortin from rendering claim 4 unpatentable under 35 U.S.C. 103(a), because the claim recites that the metatarsal guard has no slits. With respect to claim 5, even if the proposed modification to Fortin is proper, which it is not, Fortin would still not disclose a convex arch portion without any slits therein. With respect

to claim 6, Fortin does not disclose right and left support legs of less width than the convex arch portion. For all these reasons, it is submitted that claims 4-7 are not obvious in view of Fortin.

Conclusion

The relatively complex metatarsal guards of Fortin and Kracjir et al indicate that neither patentee recognized that the simple metatarsal guard would both meet the industrial requirements for impact resistant safety shoes and also provide the required flexibility to the wearer of a safety shoe incorporating the metatarsal guard. For all the foregoing reasons, it is respectfully submitted that claims 4-7 are patentable over the prior art of record.

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Respectfully submitted,



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